



**Kibocha v Internet Solutions Kenya Limited (Cause 141 of 2020)  
[2025] KEELRC 2518 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2518 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 141 OF 2020  
L NDOLO, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**CATHERINE KIBOCHA ..... CLAIMANT**

**AND**

**INTERNET SOLUTIONS KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

PARA 1.

This dispute was triggered by the termination of the Claimant's employment on the stated ground of redundancy. The Claimant's claim against the Respondent is documented by a Memorandum of Claim dated 4<sup>th</sup> March 2020. The Respondent filed a Response dated 14<sup>th</sup> May 2020.

2. At the trial, the Claimant testified on her own behalf and the Respondent called three (3) witnesses; Peter Ndirangu, Sammy Oketch and Ruth Wanjugu.

**The Claimant's Case**

3. The Claimant worked for the Respondent from 1<sup>st</sup> July 2012 until 31<sup>st</sup> October 2019, when her employment was terminated, on account of redundancy. At the time of separation, she held the position of Deputy Chief Financial Officer, earning a gross monthly salary of Kshs. 590,966.42.
4. The Claimant claims to have executed her duties with diligence, for which she was highly rated and paid a bonus.
5. The Claimant challenges the termination of her employment which she terms as unfair. She states that there was no genuine case of redundancy. She gives the following chronology of events, culminating with the termination:



- a. On 11<sup>th</sup> April 2019, the Claimant was invited to a meeting by the Respondent's Chief Financial Officer (CFO), Sammy Oketch, where she was requested to voluntarily resign; no reason was given for this request and the Claimant turned it down;
  - b. On 19<sup>th</sup> October 2019, the Claimant was invited to another meeting by the Human Resource Manager, Ruth Wanjugu where she was implored to consider the CFO's request to resign; yet again, the Claimant turned down the request;
  - c. On 1<sup>st</sup> August 2019, the Respondent advertised two positions namely; Manager-Financial Control and Manager-Financial Reporting and Regional Finance; the Claimant claims that the roles of the advertised positions were exactly the same as those in her erstwhile position;
  - d. The Claimant was asked to apply for either of the two advertised positions.
6. The Claimant avers that the foregoing actions amounted to a unilateral abolition of her office and termination of her employment. She contends that the action of unilaterally abolishing, splitting and advertising her position amounted to an unlawful and unfair termination.
  7. The Claimant asserts that the invitation made to her to apply for either of the two advertised positions, was merely for expediency and there was no intention to retain her in the Company. She claims that none of the qualified existing employees who applied for the new positions was successful.
  8. According to the Claimant, the termination of her employment was discriminatory, unreasonable, pre-textual and premeditated.
  9. The Claimant avers that the procedure adopted by the Respondent in reaching the decision to terminate her services was grossly unfair for the following reasons:
    - a. The Respondent did not notify the relevant Labour Officer of the intended termination on the ground of redundancy;
    - b. The Claimant, as an affected party in the restructuring, was not consulted to discuss and/or negotiate a less intrusive way out of the intended redundancy or the best way of implementing it, if unavoidable;
    - c. The redundancy was fabricated after the fact, to sanitise an unlawful abolition of the Claimant's position, and any communication with her was merely a formality and not genuinely intended to achieve the lawful purpose of consultation in a redundancy situation;
    - d. If the restructuring was in any way related to the Claimant's performance, the Respondent ought to have followed the Performance Enhancement Plan (PEP) Procedures stipulated in its Disciplinary Policy and Procedure Regulations;
    - e. The Claimant was entitled to the benefit of the PEP Procedures which provided additional safeguards to the minimum provisions of Section 40 of the *Employment Act*.
  10. In advancing her claim of discrimination, the Claimant states that the termination of her services was actuated by, inter alia, improper gender considerations, that had nothing to do with her performance.
  11. The Claimant avers that all other employees at her level, who were all of the male gender, were not subjected to the same treatment as her. She adds that none of the female employees who applied for the newly created positions was successful.
  12. The Claimant therefore seeks the following remedies:



- a. A declaration that the Claimant's employment was terminated unlawfully and unfairly, contrary to Sections 40 and 45 of the [Employment Act](#);
- b. A declaration that the Respondent discriminated against the Claimant, on the basis of her sex/gender, thereby violating her rights to equality and fair labour practices, guaranteed under Articles 27(5) and 41(1) of the [Constitution](#);
- c. Damages for unlawful termination equivalent to 12 months' salary;
- d. General damages for violation of the right to equality and freedom from discrimination under Article 27(5) of the [Constitution](#);
- e. Costs plus interest.

### **The Respondent's Case**

13. In its Response dated 14<sup>th</sup> May 2020, the Respondent admits having employed the Claimant, in the position of Deputy Chief Financial Officer, effective 1<sup>st</sup> July 2012.
14. The Respondent states that following expansion of its business to Uganda and Tanzania in 2018, it became necessary to restructure its Finance Department.
15. The Respondent avers that after the 2018 restructuring, the Accounts Payable Officers & Fixed Assets, Treasury & Billing, Financial Reporting and Stores/Uganda Financial Accountant all reported to the Deputy Chief Financial Officer, who in turn reported to the Chief Financial Officer. Within this structure, the Business Analyst reported directly to the Chief Financial Officer.
16. According to the Respondent, the newly adopted structure had a number of challenges, including:
  - a. Delays with respect to responsiveness to business needs;
  - b. Too many officers reporting to the Claimant, who occupied the position of Deputy Chief Financial Officer (DCFO), making it difficult to ensure efficient performance of the officers reporting to the DCFO;
  - c. Increasing supervisory pressure, with most members of the finance team feeling that there was limited oversight and guidance, thus creating a governance and compliance risk.
17. The Respondent avers that it became necessary to undertake a restructuring of the Finance Department in July 2019, to address the challenges of the 2018 model.
18. The 2019 restructuring abolished the DCFO position, replacing it with two new positions being; Manager-Financial Control and Manager-Financial Reporting & Regional Finance. This resulted in the following reporting lines:
  - a. The AP & Fixed Assets Officers, Tax Officer and Treasury & Billing Officers would report to the Manager-Financial Control;
  - b. The Management Accountant, Business Analyst and Stores/Uganda FA Officers would report to the Manager-Financial Reporting & Regional Finance;
  - c. The Manager-Financial Control and Manager-Financial Reporting & Regional Control would report to the Chief Financial Officer.
19. The Respondent points out that the 2019 Finance Department structure addressed the challenges of the 2018 structure in the following ways:



- a. It created two new positions at the same level, replacing the DCFO position, to enable quicker responsiveness to business needs;
  - b. It reduced the number of officers reporting to one manager, which enhanced collaboration, team guidance and management;
  - c. It reduced supervisory pressure by decreasing the span of control, thereby reducing the governance and compliance risk.
20. By letters dated 4<sup>th</sup> July 2019, the Respondent informed the Claimant and the County Labour Officer, Nairobi Region that the position of DCFO would be abolished. The Claimant was urged to apply for either the position of Manager-Financial Control or Manager-Financial Reporting & Regional Finance, which were at the same level as the DCFO position.
  21. The Respondent avers that the Claimant did not apply for either position and her employment was therefore terminated on 1<sup>st</sup> October 2019.
  22. The Respondent denies the Claimant's allegation that the restructuring of the Finance Department was designed to compel her to leave employment. The Respondent further denies the allegation that the Claimant was asked to resign, either by Chief Financial Officer or the Human Resource Manager.
  23. The Respondent asserts that the restructuring of the Finance Department was not caused by the Claimant's performance but by problems in the structure adopted in 2018.
  24. The Respondent maintains that it used a competitive process to recruit officers for the new positions created as a result of the restructuring. The Respondent denies the allegation that qualified internal applicants were overlooked in favour of an external candidate.
  25. The Respondent denies the Claimant's entire claim and asks the Court to dismiss it with costs.

### **Findings and Determination**

26. There are two (2) issues for determination in this case:
  - a. Whether the termination of the Claimant's employment was lawful and fair;
  - b. Whether the Claimant is entitled to the remedies sought.

### **The Termination**

27. On 1<sup>st</sup> October 2019, the Respondent wrote to the Claimant as follows:

“Dear Catherine,

Re: Declaration of Redundancy

Further to the verbal discussions on 11<sup>th</sup> June 2019 between you, and the Chief Financial Officer and a further departmental briefing on the same, held on 1<sup>st</sup> July 2019, be advised that as you have not obtained another position within the organization, your employment shall be terminated with your last working day being 31<sup>st</sup> October 2019. You shall be required to finalise any outstanding matters and handover to your line manager to ensure smooth transition of business operations.

Your final dues as entitled shall be as set out below:

1. 20 Leave days earned and not taken



2. Salary for days worked up to 31<sup>st</sup> October 2019
3. 3 Month Employment Notice
4. Redundancy pay equivalent to 15 days' pay for each year of service (7 years)
5. Pension as per company scheme
6. Internet Connectivity up to 31<sup>st</sup> January 2020
7. Any monies owed to you by the business
8. Less any monies you may owe the business and statutory deductions;

Please be advised that should you require; the organization shall organize for you a post separation workshop with the organization bearing the costs of the same.

Enclosed herewith is the clearance form that you will be required to fill and have completed by the relevant departments before returning the same to Human Resource. Note that you shall be issued with a certificate of service and that your final dues shall only be paid upon hand over and clearance.

For any clarification on the above, please do not hesitate to contact the undersigned.

Yours sincerely

For and on Behalf of Internet Solutions Kenya Ltd

(signed)

Ruth Wanjugu

Group Human Resource Manager”

28. This letter cites redundancy as the reason for termination of the Claimant’s employment. Section 2 of the [Employment Act](#) and the corresponding provision in the [Labour Relations Act](#) define redundancy as:

“the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”

29. Section 40 of the [Employment Act](#) lays out the roadmap to be followed by every employer declaring redundancy as follows:

40.

- (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions –
  - (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of reasons for, and the extent of, the intended



redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;

- (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
- (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
- (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
- (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
- (f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
- (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.

30. The redundancy notices contemplated under Section 40(1)(a) and (b) of the *Employment Act*, serve the important purpose of availing the affected parties, an opportunity to consult on available ways of carrying out the process with minimal damage. This was well stated by Maraga JA (as he then was) in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] thus:

“The purpose of the notice under Section 40(1) (a) and (b) of the *Employment Act*, as is also provided for in...ILO Convention No. 158-Termination of Employment Convention, 1982, is to give the parties an opportunity to consider ‘measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.’ The consultations are therefore meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it is unavoidable.”



31. This position was affirmed in the subsequent decision in *The German School Society & another v Ohany & another* [2023] KECA 894 (KLR) where the Court of Appeal held that the requirement for consultation is implied in Section 40 of the *Employment Act*, stating that:
- “In essence, consultation is an essential part of the redundancy process and ensures that there is substantive fairness. The employer should ensure that it carries out the process as fair as possible and that all mitigating factors are taken into consideration.”
32. It is on record that the redundancy declared on the position of DCFO, hitherto held by the Claimant, was as a result of restructuring of the Respondent’s Finance Department. It is also on record that this particular restructuring was informed by a wide span of control exercised by the DCFO, which according to the Respondent, occasioned operational inefficiencies.
33. In her final submissions dated 16<sup>th</sup> June 2025, the Claimant referred to the decision in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* (supra) where genuine restructuring was affirmed as a valid reason for declaring redundancy.
34. In its submissions dated 30<sup>th</sup> July 2025, the Respondent relied on the decision in *Jane I Khalechi v Oxford University Press E.A Ltd* [2013] eKLR where it was held as follows:
- “Companies restructure not necessarily because they are in financial distress, but for such other reasons as mechanization of the modes of production...Positions may become redundant because there is a decrease in business, the operations have become mechanized, or there is a necessity to re-organize, to enhance operations and prevent closure.”
35. The Claimant told the Court that as DCFO, she had five streams of officers reporting directly to her. This span of control, would reasonably be construed as too wide and the Court disagrees with the position taken by the Claimant that there was no genuine case of redundancy. Further, the Claimant’s claim that the redundancy was choreographed to push her out of employment was not proved. In this regard, the allegation that she had been asked to resign was not supported by any evidence.
36. The Court further notes that as a way of managing the transition, the Respondent invited the Claimant to apply for either of the two new positions namely; Manager-Financial Control and Manager-Financial Reporting & Regional Finance, created upon the phasing out of the position of DCFO. For reasons that were not clear to the Court, the Claimant declined to apply for any of the two positions.
37. It seems to me that the offer made to the Claimant to candidate for any of the two new positions constituted reasonable accommodation towards minimising the negative impact of the restructuring. Having rejected this offer, the Claimant effectively terminated the consultation phase, leaving the Respondent with no alternative but to terminate her employment on account of redundancy.
38. The Respondent made reference to the decision in *Josephine M. Ndungu & others v Plan International Inc* [2019] KEELRC where it was held that employees who had declined to apply for newly created positions could not sustain a claim of unlawful redundancy.
39. There is evidence that the Claimant was duly informed of the new structure of the Finance Department and it cannot therefore be said that she had no prior notice of the impending redundancy. The Respondent also produced evidence of requisite notice to the Labour Office. The Court is therefore satisfied that the notice requirements were fully met.



40. Moreover, since the redundancy only affected one position, the selection criteria contemplated under Section 40(1) (c) of the [Employment Act](#) did not apply. Additionally, the Claimant was paid all her statutory dues.
41. In light of the foregoing, I find no reason to fault the Respondent with respect to either the reason for redundancy or the procedure used to execute it. Further, no evidence was led to support the claim for discrimination.
42. Ultimately, I find the Claimant's entire claim unmeritorious and proceed to dismiss it.
43. In view of the past employment relationship between the parties, with no negative record on the part of the Claimant, I direct that each party shall bear their own costs.

Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Ndiritu for the Claimant

Mr. Ondieki for the Respondent

